

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

JESE HERNANDEZ-MENDOZA, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.	5:15-CV-05077-KES ORDER ADOPTING REPORT AND RECOMMENDATION AND GRANTING MOTION TO DISMISS
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Petitioner, Jese Hernandez-Mendoza, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody. The court referred the motion to Magistrate Judge Veronica Duffy. The Magistrate Judge ordered the parties to file briefs showing cause why the petition should not be dismissed as untimely pursuant to 28 U.S.C. § 2255(f). Hernandez-Mendoza did not respond. The United States responded that the motion should be dismissed as untimely. Docket 5.

On March 29, 2016, Magistrate Judge Duffy submitted a report and recommended that Hernandez-Mendoza's petition be denied with prejudice as untimely. The time for objections has passed. No objections to the report and recommendation have been filed pursuant to 28 U.S.C. § 2254, Rule 8(b)(3). The court has considered the case de novo and adopts the report and recommendation in full. Therefore, it is

ORDERED that the magistrate judge's report and recommendation (Docket 7) is adopted in full and Hernandez-Mendez's § 2255 motion to vacate, set aside, or correct his sentence is denied with prejudice.

IT IS FURTHER ORDERED that based upon the reasons set forth herein and pursuant to Fed. R. App. P. 22(b), the court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Therefore, a certificate of appealability is denied.

Dated April 19, 2016.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE